IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1786 OF 2004
IN
CRIMINAL APPEAL NO.528 OF 2004

The State of Maharashtra ...Applicant

vs.

Mrs.Rani Kumar ...Respondent

Ms S.V.Gajare,A.P.P. for the Applicant
Ms Yasmin Tavaria for the Respondent

CORAM: A.S.OKA,J.
DATE : NOVEMBER 10,2006.

P.C.:

1. Heard learned A.P.P. for State. The prayer in this Application is for condonation of delay of 514 days in preferring the Application for leave to prefer an Appeal. The order of acquittal was passed on 19th July 2002. The certified copies were ready on 31st August 2002. The certified copies were delivered on 9th September 2002 and the papers were forwarded by the concerned Public Prosecutor in the Sessions Court to the Law Ministry on 27th September 2002. 16th November 2002 was the last date for preferring the Appeal. The resolution was passed by the Law and Judiciary Department, Mantralaya, Mumbai on 18th November 2002. The relevant papers were received by the office of the Public Prosecutor on 20th November 2002. The Appeal was filed on 24th December 2002. On 6th January 2004, the Appeal came up for admission before this Court. As there were certain errors in the Memorandum of Appeal, this Court permitted the

Applicant to withdraw the Appeal with liberty to file a fresh Appeal. A fresh Appeal in terms of the liberty granted by this court was filed on 15th April 2004.

2. The Application for condonation of delay was argued on 13th October 2006. At that time, it was pointed out to the to the learned A.P.P. that in the Application there is no explanation whatsoever for the delay from 6th January 2004 till 15th April 2004. On the request made by the learned A.P.P., time was granted till 20th October 2006 to enable the learned A.P.P to file further Affidavit. On 20th October 2006, time was again sought by the learned A.P.P to file additional Affidavit. This Court by way of indulgence granted time till 8th November 2006 to file additional Affidavit. In the said order, it is specifically recorded that on the earlier date the said application was fully argued and this court was not satisfied with the explanation for delay offered by the Applicant in the Application. Today, the learned A.P.P placed reliance on the Affidavit dated 6th November 2006 of one L.D.Pinto, a Drugs Inspector. Perusal of the Affidavit shows that the same contains no explanation whatsoever for delay from 6th January 2004. The said Affidavit deals with the facts leading to filing of the earlier Appeal which was allowed to be withdrawn. In the said Affidavit no attempt is made to explain the delay from 6th January 2004 onwards.

3. Sanction was already granted for preferring the Appeal on

the basis on which earlier Appeal was preferred. Therefore, there was no reason to wait till 15th April 2004 to file a fresh Appeal. Fresh Appeal was required to be filed as in the earlier Appeal there was an error while mentioning the case number. Notwithstanding liberty granted by this court, additional Affidavit has not been filed and the Affidavit which is filed on 6th November 2006 contains no explanation whatsoever for the delay from January 2004 onwards.

4. The delay is in preferring the Appeal against acquittal. It is well settled law that the order of acquittal further strengthens the presumption of innocence. If there is no explanation for delay. By way of indulgence delay cannot be condoned. Hence, Application is rejected.

JUDGE